

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

4. The Department has paid GA for some of the nights

the petitioners were in the motel. However, the petitioners have had to apply most of their ANFC payments and family members' earnings to paying for the motel.

5. At the hearing in this matter, held on August 11, 1998, the Department represented that it had denied the petitioners a housing allowance as part of their ANFC payments because motels are not considered a "house apartment, (or) lot" under the regulations (see infra). After reviewing some past Board cases involving temporary housing, the hearing officer sent the Department the following memorandum, dated September 2, 1998:

The issue in these cases is whether expenses incurred for a homeless family staying in a motel qualify as a "housing expense" under WAM § 2245.3. At the hearing the Department stated its position that such expenses were not a "house, apartment, (or) lot" as set forth in the regulation. While this appears to be a clear-cut issue of interpreting a regulation, I am troubled by my near-certain recollection that in other cases (cases in Burlington and Rutland come to mind) ANFC recipients living in motels for extended periods of time continued to receive their housing allowances. Given the amount of controversy that has surrounded temporary housing cases over the years, I find it curious that this issue has never arisen before. Does the Department have a statewide policy on this?

Another concern I have is that when GA is being paid for emergency housing to a family receiving ANFC, why would the Department not include a housing allowance in their ANFC and avoid paying this same amount in GA for the family's housing needs? Again, what is Department policy?

Before issuing my recommendation in this matter, I ask that the Department submit a written statement under Fair Hearing Rule 5 that sets forth the Commissioner's position vis-a-vis the above concerns. It needn't be elaborate, but I think it is important for the Board to clearly know that these concerns were

considered by the Department in its decision in this matter.

Please provide me with the Department's response to the above by September 18, 1998. Let me know immediately if you have any questions or concerns.

As of the date of this Recommendation the Department has not responded to the above.¹

6. Based on the Hearing Officer's uncontroverted recollections, which are based on records of the Board, it is found that the Department, prior to these cases, has considered payments for motels to constitute a "housing expense" qualifying for a housing allowance under ANFC.

ORDER

The Department's decisions are reversed.

REASONS

Welfare Assistance Manual (WAM) § 2245.3 includes the following under "Housing Allowance--Eligibility Standards":

Housing expense is defined as the total of all verified costs incurred for any of the following: rental (house, apartment, lot), real estate (or equivalent personal property) taxes, maintenance and repairs, and mortgage payments. (To include allowances for maintenance and repairs within the housing expense the property must be owned and listed in the name of the applicant/recipient.) Housing allowances shall be budgeted "as incurred" to cover recurring shelter expenses necessary to maintain a home, not to exceed the current maximums stated below. The housing allowance portion of an ANFC grant is limited to

¹The hearing officer reminded the Department's attorney of this in a phone conversation on October 6, 1998.

expenses incurred for the current month. (i.e. overdue expenses for prior months cannot be included in the ANFC grant for the current month). Expenses incurred less frequently than monthly (e.g. real estate taxes) shall be prorated into monthly amounts for the period covered.

MAXIMUM MONTHLY ALLOWANCE

<u>HOUSING TYPE</u>	<u>OUTSIDE CHITTENDEN COUNTY</u>	<u>CHITTENDEN COUNTY ONLY</u>
Home Ownership	363	450
Rental	363	450

The expense for shelter when shared may be included based upon the client's cost not to exceed the maximums. . . .

The issue in these cases is whether payments for a motel are considered a "rental (house, apartment, lot)" under the above regulation. As noted above, the hearing officer recollects from past cases, and Board records indicate, that up until now the Department has granted or continued ANFC housing allowances to individuals living in motels. The Department has not offered any refutation of this recollection or distinction in policy from the instant cases.

It is axiomatic that agencies must apply rules and policies uniformly and consistently. The ANFC regulations expressly strive for ". . . assurance that department policies are clear and consistently applied . . ." W.A.M. 2215. In these cases, based on the Department's lack of response to the hearing officer's inquiry, it can only be concluded that the Department has arbitrarily failed to

apply its long-standing policy of allowing motel payments as a "housing expense" under § 2245.3. Therefore, the Department's decisions are reversed.

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